



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

DA 16-644

Adjustment of Civil Monetary Penalties to Reflect Inflation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Inflation Adjustment Act) requires the Federal Communications Commission to amend its forfeiture penalty rules for inflation.

DATES: This rule is effective August 1, 2016.

FOR FURTHER INFORMATION CONTACT: Donna Cyrus, Enforcement Bureau, 202-418-7325.

SUPPLEMENTARY INFORMATION: On June 9, 2016, the Enforcement Bureau of the Federal Communications Commission adopted and released an order on delegated authority, DA 16-644, which adjusts the Commission's forfeiture penalties for inflation. On November 2, 2015, the President signed into law the Bipartisan Budget Act of 2015, which included, as Section 701 thereto, the 2015 Inflation Adjustment Act, which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410), to improve the effectiveness of civil monetary penalties and maintain their deterrent effect. Under the act, federal agencies, including the Federal Communications Commission, must issue an interim final rulemaking and publish interim final rules by July 1, 2016, which will take effect by August 1, 2016. According to the 2015 Inflation

Adjustment Act, the initial inflation adjustment will be the percentage by which the Consumer Price Index (CPI) for the month of October 2015 exceeds the CPI for the month of October of the calendar year during which the civil monetary penalty “was established or adjusted under a provision of law other than this Act.” The 2015 Inflation Adjustment Act requires the Director of the Office of Management and Budget (OMB) to issue, guidance to agencies on implementing the Act. OMB issued that guidance on February 24, 2016, and this Order follows that guidance. Pursuant to the 2015 Inflation Adjustment Act, we update the civil monetary penalties set forth in the Communications Act of 1934, as amended (Communications Act or Act), to reflect an “inflation adjustment” that derives from the “cost-of-living adjustment.” The cost-of-living adjustment reflects the total inflation that has taken place in the years since the penalties were last set or adjusted by statute or rule.

This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

The Commission will not send a copy of this Order per the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the rules are amended only to account for inflation and do not substantially affect the rights or obligations of non-agency parties.

List of Subjects

Administrative practice and procedure

Penalties

FEDERAL COMMUNICATIONS COMMISSION

Lisa S. Gelb,
Chief of Staff, Enforcement Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 part 1 as follows:

PART 1---PRACTICE AND PROCEDURE

Subpart A---General Rules of Practice and Procedure

1. The authority citation for part 1 continues to read as follows:

Authority: 15 U.S.C. 79 et seq., 47 U.S.C. 151, 154(i) and (j), 155, 157, 225, 227, 303(r), and 309.

2. Section 1.80 is amended by revising the table following paragraph (b)(8) “Section III. Non-Section 503 Forfeitures That Are Affected by the Downward Adjustment Factors” and revising paragraph (b)(9) to read as follows:

§1.80 Forfeiture proceedings.

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Section III. Non-Section 503 Forfeitures That Are Affected by the Downward Adjustment Factors

Violation	Statutory amount (\$)
Sec. 202(c) Common Carrier Discrimination	\$11,362, \$568/day.
Sec. 203(e) Common Carrier Tariffs	\$11,362, \$568/day.
Sec. 205(b) Common Carrier Prescriptions	\$22,723.
Sec. 214(d) Common Carrier Line Extensions	\$2,272/day.
Sec. 219(b) Common Carrier Reports	\$2,272/day.
Sec. 220(d) Common Carrier Records & Accounts	\$11,362/day.
Sec. 223(b) Dial-a-Porn	\$117,742.
Sec. 227(e) Caller Identification	\$10,874/violation. \$32,622/day for each day of continuing violation, up to \$1,087,450 for any single act or failure to act.
Sec. 364(a) Forfeitures (Ships)	\$9,468/day (owner).
Sec. 364(b) Forfeitures (Ships)	\$1,894 (vessel master).
Sec. 386(a) Forfeitures (Ships)	\$9,468/day (owner).
Sec. 386(b) Forfeitures (Ships)	\$1,894 (vessel master).
Sec. 634 Cable EEO	\$839.

(9) Inflation adjustments to the maximum forfeiture amount.

(i) Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015

(2015 Inflation Adjustment Act), Public Law 114-74 (129 Stat. 599-600), which amends the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, Public Law 101-410 (104 Stat. 890; 28 U.S.C. 2461 note), the statutory maximum amount of a forfeiture penalty assessed under this section shall be adjusted for inflation with an initial “catch-up” adjustment through an interim final rulemaking and interim final rules published by July 1, 2016, to take effect by August 1, 2016. Subsequent annual adjustments shall be published by January 15 each year. Catch-up adjustments will be based on the ‘cost-of-living adjustment’ (CPI), which is the percentage (if any) by which the CPI for October in the year of the previous adjustment exceeds the CPI for October 2015. Annual inflation adjustments will be based on the percentage (if any) by which the CPI for October preceding the date of the adjustment exceeds the prior year’s CPI for October. The Office of Management and Budget has provided “Table A: 2016 Civil Monetary Penalty Catch-Up Adjustment Multiplier by Calendar Year” (Table A) to determine the civil monetary penalty catch-up adjustment multiplier by calendar year. The Catch-up adjustment is determined by

(A) Identifying from Table A, column A the latest year the penalty level or penalty range was established or last adjusted by statute or regulation (other than pursuant to the Inflation Adjustment Act), and from column B, identifying the corresponding multiplier to adjust the penalty level or range for inflation;

(B) Multiplying the corresponding amount from column B by the amount of the maximum penalty level or the range of minimum and maximum penalties as most recently established or adjusted by statute or regulation (other than pursuant to the Inflation Adjustment Act before November 2, 2015);

(C) Rounding to the nearest dollar; and

(D) Comparing the new amount or range of the penalty with the amount or range in the prior year to ensure the maximum increase is not more than 150 percent of the most recent levels.

(ii) The application of the inflation adjustments required by the 2015 Inflation Adjustment Act, 28 U.S.C. 2461 note, results in the following adjusted statutory maximum forfeitures authorized by the Communications Act:

U.S. Code citation	Maximum Penalty after 2015 Inflation Adjustment Act adjustment (\$)
47 U.S.C. 202(c)	\$11,362
	\$568
47 U.S.C. 203(e)	\$11,362
	\$568
47 U.S.C. 205(b)	\$22,723
47 U.S.C. 214(d)	\$2,272
47 U.S.C. 219(b)	\$2,272
47 U.S.C. 220(d)	\$11,362
47 U.S.C. 223(b)	\$117,742
47 U.S.C. 227(e)	\$10,874
	\$32,622
	\$1,087,450
47 U.S.C. 362(a)	\$9,468
47 U.S.C. 362(b)	\$1,894
47 U.S.C. 386(a)	\$9,468
47 U.S.C. 386(b)	\$1,894

47 U.S.C. 503(b)(2)(A)	\$47,340
	\$473,402
47 U.S.C. 503(b)(2)(B)	\$189,361
	\$1,893,610
47 U.S.C. 503(b)(2)(C)	\$383,038
	\$3,535,740
47 U.S.C. 503(b)(2)(D)	\$18,936
	\$142,021
	\$108,745
47 U.S.C. 503(b)(2)(F)	\$1,087,450
	\$1,875
47 U.S.C. 507(a)	
47 U.S.C. 507(b)	\$275
47 U.S.C. 554	\$839

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